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In the Supreme Court of the United States

OCTOBER TERM, 1963

NO. [REDACTED]

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DEPARTMENT OF MENTAL HYGIENE OF THE
STATE OF CALIFORNIA,

Petitioner,

vs.

EVELYN KIRSCHNER, Administratrix of the Estate of
ELLINOR GREEN VANCE,

Respondent.

On Writ of Certiorari to the Supreme Court of the
State of California

BRIEF FOR THE STATE OF OREGON
AS AMICUS CURIAE

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In the Supreme Court of the United States

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NO. 1141

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STATE OF CALIFORNIA,

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EVELYN KIRSCHNER, Administratrix of the Estate of
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THE INTEREST OF THE STATE OF OREGON

The State of Oregon supports the position of the State of California in the instant case. We concur with the authorities cited by the State of California in support of general propositions of law. In the interest of brevity we avoid duplication of citations to jurisdictions other than the State of Oregon. We present here authorities expressing decisions, interpretations and constructions in our jurisdiction relating to issues pertinent to the instant case.

Liability for the care, support and maintenance of a person in a state institution is imposed upon a class of persons composed of certain near relatives of the inmate. (Sec. 6650, California Welfare and Institutions Code—App. A). The Supreme Court of the State of California held this statute to be in violation of the Fourteenth Amendment of the United States Constitution. It held that the liability imposed was a species of taxation (Cal. Op. 8) and that there was no rational basis to support the separate classification for taxation based upon close family relationship. Writ of Certiorari upon these issues has been granted by this Court.

The State of Oregon has statutes (Oregon Revised Statutes 179.630 and 179.640) similar in language and identical in principle to the California statute in question. The validity of the Oregon statutes is in jeopardy until this Court determines whether the Equal Protection Clause denies state legislatures the power to define family responsibilities. Denial of this power would seriously impair the fiscal stability of the Oregon program for the care of the mentally ill by eliminating revenue of approximately \$2,500,000 annually.

Also, the State of Oregon has statutes imposing responsibility, within reasonable standards of financial ability, upon a similar class of persons to reimburse the state for public assistance furnished to a relative within the class. Denial of power in the state legislature to define family responsibilities in this area could create multitudinous litigation which could deprive the State of Oregon of nearly a million dollars annually. The de-

terrent effect of relative responsibility in keeping recipients off welfare rolls is inestimable.

ARGUMENT

THE STATUTES CODIFY THE COMMON LAW RECIPROCAL DUTY OF FAMILY SUPPORT.

The common law of the State of Oregon consists of the common law of England and English statutory amendments thereto prior to the Revolution. *Peery v. Fletcher*, 93 Or. 43, 172 P. 143; Oregon Constitution, Article XVIII, Sec. 7. (App. A) Reciprocal duties of family support were first codified in 43 Elizabeth, Chapter 2, Section 7. This duty of support remained a part of the common law of the Territory of Oregon and was expressed in Statutes of Oregon, 1854, page 360, reading as follows:

"Of Parents and Children. Chapter I. (1) Be it enacted by the legislative assembly of the Territory of Oregon, that parents shall be bound to maintain their children when poor and unable to work themselves, and children shall be bound to maintain their parents in the like circumstances."

The principle of this early statute is now expressed in Oregon Revised Statutes 109.010 (App. A) and is the basis for the legislative classification for liability of relatives contained in Oregon Revised Statutes 179.630 and 179.640 (App. A). It is submitted that these statutes do not create a tax or impose any additional burden upon relatives which did not theretofore exist under the common law of the State of Oregon.

STATUTORY CLASSIFICATION OF CLOSE FAMILY RESPONSIBILITY IS REASONABLE, JUSTIFIED AND IN THE PUBLIC INTEREST.

The Legislature has chosen the class, close relatives meeting reasonable standards of financial ability, to meet their moral, common law and statutory duty to contribute toward the care, maintenance and support of members of their immediate family needing institutionalized treatment and care. While it may seem that this choice might place upon this class a burden not borne on an entirely equal basis by others not included therein, such a result does not effect a constitutional condemnation of a classification which is based upon a real and substantial difference between classes. *Namba et al. v. McCourt and Neuner*, 185 Or. 579, 612, 204 P.2d 569 (1949); *Sproul et al. v. State Tax Commission et al.* 234 Or. 579, 383 P.2d 754 (1963). Only if a classification is arbitrary, unreasonable, without rational basis, or is wholly lacking in valid public considerations for distinguishing between classes, is it interdicted by the "equal protection" clause of the Federal Constitution, as well as by the "equal privileges and immunities" clause of the Oregon Constitution, the tests for measurement of its validity being the same in each case. *Savage v. Martin*, 161 Or. 660, 91 P.2d 273 (1939); *Phillips v. City of Bend*, 192 Or. 143, 234 P.2d 572 (1951); *State of Oregon v. Pirkey*, 203 Or. 697, 281 P.2d 698 (1955). Only in those cases in which the classification is palpably arbitrary or clearly unreasonable will it be deemed unconstitutional because the requirement of equal protec-

tion is not a "pedagogical requirement of the impracticable" which commands that a classification be made with mathematical nicety or absolute equality. *Mallatt v. Luhn et al.*, 206 Or. 678, 702, 294 P.2d 871 (1956); *Plummer v. Donald M. Drake Company*, 212 Or. 430, 320 P.2d 245 (1958); *Sproul et al. v. State Tax Commission et al.*, 234 Or. 579; 383 P.2d 754 (1963).

In *Nilsen v. Davidson Industries, Inc., et al.*, 226 Or. 164, 360 P.2d 307 (1961), the Supreme Court of Oregon states as follows:

"Classification is primarily a legislative problem and the courts have no authority to interfere with the legislative determination as long as it is based upon some real and substantial distinction having a just relation to the object in view. *Mallinckrodt Works v. St. Louis*, 238 US 41, 55, 59 LE 1192, 35 SC 671. Article I, Section 20 of the state constitution is the counterpart of the 'equal protection of the laws' clause of the Fourteenth Amendment of the Constitution of the United States. *State v. Savage*, 96 Or. 53, 59, 184 P. 567, 189 P. 427. In *Mallatt v. Luhn et al.*, 206 Or. 678, 702, 294 P.2d 871, we said that * * * a classification having some reasonable basis does not offend against the Federal Constitution or the constitution of this state merely because it is not made with mathematical nicety or because in practice it results in some inequality".

Membership in a family entitles an individual to privileges of association, companionship, love and affection. Such membership also imposes obligations of protection, support, care and maintenance. These correlative and reciprocal privileges and duties are fundamental factors in establishing the family as the unit of our society and civilization. The instant decision of the California Su-

preme Court is in error in holding that classification of the family unit "has no rational basis" to support the distinction between classes.

It is submitted that the classification in issue is not arbitrary but reasonable, that it is founded upon logical and rational bases, and that valid public interests and considerations distinguish the class of close family responsibility recognized morally and legally. Taxpayers generally should not be compelled to assume the burden of supporting needy or institutionalized persons having their own financially responsible close relatives.

DOCTRINE OF "PARENS PATRIAE" SUPPLEMENTS BUT DOES NOT SUPERSEDE RELATIVE RESPONSIBILITY, COMMON LAW OR STATUTORY.

"Parens patriae" doctrine has been defined in *McIntosh v. Dill*, 205 P. 917, 86 Okl. 1, 31 Words and Phrases, page 99:

"The doctrine of 'parens patriae' is the inherent power and authority of a Legislature to provide protection of the person and property of persons non sui juris, such as minors, insane and incompetent persons."

It has been established that certain immediate relatives have a common law and statutory reciprocal duty of support. The state, in providing support for needy and institutionalized persons, performs its duty under this doctrine if the immediate relatives have failed or are unable to fully perform their duties in this respect. The relatives are not relieved of their duties to support by the state's performance under the "parens patriae" doctrine.

CONCLUSION

Statutory classification by the legislature of the husband, wife, father, mother and children, as a class and within reasonable standards of financial ability, to reimburse the state for reciprocal support when needy or institutionalized, is reasonable, is in the public interest and is not in violation of the Fourteenth Amendment of the United States Constitution.

For the reasons stated, it is respectfully submitted that the judgment of the Supreme Court of the State of California should be reversed.

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APPENDIX A**PERTINENT STATUTORY PROVISIONS**

Oregon Revised Statutes 109.010

Duty of Support. Parents are bound to maintain their children who are poor and unable to work to maintain themselves; and children are bound to maintain their parents in like circumstances.

Oregon Revised Statutes 179.630

Relatives' liability for payment. (1) Relatives of a person at a state institution are liable for the care and maintenance of such person under ORS 179.620, according to their respective abilities to pay, as follows:

- (a) The husband for the wife.
- (b) The wife for the husband.
- (c) The parents for their children.
- (d) The children for their parents.

(2) No liability for the support of a person at a state institution shall be imposed under the provisions of ORS 179.610 to 179.770 upon that person's child if, for a period amounting to 25 percent of the minority of the child, such person wilfully deserted or abandoned the child, or, by expulsion or cruelty, drove the child from the parental home, or, without good cause, was responsible for the child's being "dependent" as defined by ORS 418.205.

(3) If a circuit court of this state imposes liability upon a relative for the support of any person at a state institution, and fixes the amount thereof, the amount so fixed shall be prima facie evidence of the maximum limit of the relative's ability to pay under the provisions of ORS 179.610 to 179.770.

Oregon Revised Statutes 179.640

Determination of ability to pay. (1) At the time of admission of a person to a state institution, the Board of Control shall determine whether or not the person at the state institution or his estate or responsible relatives are financially able to pay for the care and maintenance of such person at the state institution as required by ORS 179.610 to 179.770. If the board determines at the time of admission or at some later time while the person remains at the state institution that such person, his estate or responsible relatives are able to pay, in whole or in part, for the care and maintenance of such person at the state institution, the board shall make its order against the proper persons or estate found responsible, fixing the extent of the liability. Thereafter, from time to time while the person remains in the state institution, the board shall modify its order to recognize a change in the ability of the persons to pay as specified in the order of the board; but, in any case where a court order has been made, the court order may be modified only as provided in QRS 179.650 and 179.680.

(2) In any case where the person is discharged from the institution before the determination of the extent of liability can be made by the board, the board may make its determination after the person's discharge. However, the determination shall be based on the ability to pay of the person, his estate or his responsible relatives during the time the person was in the institution.

(3) If the board is unable to determine to its satisfaction whether or not the person at the state institution,

his estate or responsible relatives are financially able to and will contribute towards the care and maintenance of such person, the board may request a court determination of the question in the manner provided in subsection (4) of this section. If any person against whom the board has made an order under subsection (1) of this section desires to obtain a court review of the determination of the board, he shall proceed in the manner provided in subsection (4) of this section.

(4) (a) Subject to paragraphs (b) and (c) of this subsection, upon request of the board or the person against whom the board order was made, the probate court of the county from which the person was committed or the probate court of the county of which such person was a resident when admitted to the state institution or the probate court of the county in which the responsible person resides shall cause a citation to be issued by the clerk of the court and served by the sheriff of the county, citing the person at the state institution and any guardian, husband, wife, parents and children of such person to appear in court before such judge at a time and place designated in the citation and show cause why a court order should not be entered adjudging that the person or his estate or responsible relatives, or any combination of them, are financially able to pay for the care and maintenance of such person at the state institution.

(b) Notwithstanding any other provision of this section, if the person at the state institution was committed to the state institution, the probate court for the county

where the commitment was made has exclusive jurisdiction under this section.

(c) Subject to paragraph (b) of this subsection, if two or more courts are entitled to exercise jurisdiction under this section, the court first taking jurisdiction shall retain jurisdiction to the exclusion of every other court.

(5) The court may direct subpoenas to be issued to any witness to appear and adduce evidence upon the trial of the matter for the purpose of determining the financial ability of the person at the state institution, his estate or his responsible relatives to pay. If a person is in a state institution for the mentally ill or mentally defective and does not have a guardian and it is necessary that he have a guardian for the purposes of the proceeding, the court shall appoint some competent, disinterested person, at the expense of the county, as guardian ad litem to appear for and who shall have full authority to represent such person. All such persons shall be examined as witnesses under oath for the purpose of determining the financial ability of the person at the state institution, his estate or responsible relatives, to pay for his care and maintenance in the state institution.

(6) Findings of fact shall be made by the court as to the ability to pay for such care and maintenance as provided in this section and an order entered against the proper persons or estate found responsible, fixing the extent of the liability.

California Welfare and Institutions Code

Article 5. Property and Support of Patients

6650. The husband, wife, father, mother, or children of a mentally ill person or inebriate, the estates of such persons, and the guardian and administrator of the estate of such mentally ill person or inebriate, shall cause him to be properly and suitably cared for and maintained, and shall pay the costs and charges of his transportation to a state institution for the mentally ill or inebriates. The husband, wife, father, mother, or children of a mentally ill person or inebriate, and the administrators of their estates, and the estate of such mentally ill person or inebriate, shall be liable for his care, support, and maintenance in a state institution of which he is an inmate. The liability of such persons and estates shall be a joint and several liability and such liability shall exist whether the mentally ill person or inebriate has become an inmate of a state institution pursuant to the provisions of this code or pursuant to the provisions of Sections 1026, 1368, 1369, 1370, and 1372 of the Penal Code.

(Amended by Stats. 1941, Ch. 916, by Stats. 1943, Ch. 1052, by Stats. 1945, Ch. 247, and by Stats. 1947, Ch. 625)

CONSTITUTION OF OREGON

Article I, Section 20

Equality of privileges and immunities of citizens. No law shall be passed granting to any citizen or class of citizens privileges, or immunities, which, upon the same terms, shall not equally belong to all citizens.

Article XVIII, Section 7

Former Laws continued in force. All laws in force in the Territory of Oregon when this Constitution takes effect, and consistent therewith, shall continue in force until altered, or repealed.

CONSTITUTION OF THE UNITED STATES

Amendment XIV

Section 1. Citizenship; privileges and immunities; due process, equal protection. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.